

BEFORE THE ARIZONA CORPORATION COMMISSION



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COMMISSIONERS

Arizona Corporation Commission

DOCKETED

JUN 21 2010

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY

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In the matter of

WELLS FARGO INVESTMENTS, LLC,

Respondent.

DOCKET NO. S-20727A-10-0068

DECISION NO. 71773

ORDER TO CEASE AND DESIST AND
ORDER FOR ADMINISTRATIVE
PENALTIES AND CONSENT TO SAME
BY: WELLS FARGO INVESTMENTS, LLC

WHEREAS, Wells Fargo Investments, LLC ("WFI") is a dealer registered in the state of Arizona; and

WHEREAS, WFI's activities regarding the marketing of auction rate securities have been the subject of coordinated investigations conducted by a multistate task force; and

WHEREAS, WFI has cooperated fully with regulators conducting the investigations by providing documentary evidence and other materials and by providing regulators with access to information relevant to their investigations; and

WHEREAS, on November 18, 2009, WFI and the multistate task force reached an agreement to resolve the investigations relating to WFI's marketing of ARS to certain customers; and

WHEREAS, WFI agrees, among other things, to purchase certain auction rate securities from customers and to make certain payments; and

WHEREAS, WFI elects to waive permanently any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order to Cease and Desist and Order for Administrative Penalties (the "Order"); and

1 WHEREAS, WFI admits the jurisdiction of the Arizona Corporation Commission
2 ("Commission") and consents to the entry of this Order by the Commission; and

3 WHEREAS, Wells Fargo Securities, LLC ("WFS"), as successor to Wells Fargo Brokerage
4 Services, LLC ("WFBS"), and Wells Fargo Institutional Securities, LLC ("WFIS") have
5 voluntarily agreed to purchase ARS from certain customers, as described in Section IV below, and
6 to use best efforts to provide liquidity solutions for certain other customers; and

7 WHEREAS, WFI neither admits nor denies the Findings of Fact and Conclusions of Law
8 contained in this Order.

9 NOW, THEREFORE, the Commission, as administrator of the Securities Act, hereby
10 enters this order:

11 I.

12 **FINDINGS OF FACT**

13 **Background**

14 1. Auction Rate Securities ("ARS") are long-term bonds issued by municipalities,
15 corporations, and student loan companies, or perpetual equity instruments issued by closed-end
16 mutual funds, with variable interest rates that reset through a bidding process known as a Dutch
17 auction.

18 2. In a successful Dutch auction, ARS are auctioned at par and bids with successively
19 higher rates are accepted by the auction agent for the issuer until all of the available securities are
20 sold. All ARS are then purchased or sold at the lowest interest rate bid that will result in all ARS
21 placed up for auction being sold. If there are not enough buy orders to purchase all the securities
22 being sold at auction, a failed auction occurs. In the event of an auction failure, the issuer of the
23 ARS pays a default interest rate until the next successful auction. Broker-dealers that served as
24 dealers for the auctions sometimes placed "support bids" on their own behalf in order to prevent
25 auction failures.
26

3. Beginning on or about February 13, 2008, there were not enough purchasers for ARS at many auctions. The broker-dealers that had previously supported the auctions for these securities ceased their practice of bidding to prevent auction failures. As a result, the ARS market experienced widespread failed auctions. ARS purchasers who wished to sell their ARS were forced to continue holding their positions.

Marketing of ARS by WFI

4. WFI marketed ARS to some of its customers, including individual customers, small businesses, and nonprofit organizations. Since at least 2001, WFI offered Auction Rate Preferred Shares ("ARPS") through its fixed-income desk. In addition, beginning in 2006, WFI facilitated Auction Rate Debt Securities ("ARDS") trades for select customers. WFI did not underwrite ARS and did not serve as an auction manager or auction agent.

5. On February 14, 2008, WFI customers nationwide were holding approximately \$2.95 billion in ARS in 5,692 accounts.

6. WFI participated in sales of ARS to customers in the state of Arizona.

7. Because of the auction failures described above, certain WFI customers who were holding ARS on February 14, 2008, have been unable to sell their ARS at auction.

8. In connection with the marketing of ARS, WFI failed to adopt policies and procedures reasonably designed to ensure that its registered agents recommended ARS only to customers who had stated investment objectives that were consistent with their purchase of ARS. Some WFI registered agents recommended ARS to customers as a liquid, short-term investment. As a result, some WFI customers, who needed short-term access to funds, invested in ARS, even though ARS had long-term maturity dates, or in the case of ARPS, no maturity dates.

Failure to Supervise Agents Who Marketed ARS

9. WFI failed to provide adequate supervision and training to its registered agents in connection with the marketing of ARS. Some of WFI's registered agents were not adequately

1 educated about ARS products. WFI failed to provide timely and comprehensive sales and
2 marketing literature regarding ARS and the mechanics of the auction process.

3 10. Some WFI registered agents believed that the ARS were safe and were not aware
4 that auctions could fail and that money invested in ARS could become frozen. In part, this was
5 because some WFI registered agents were not aware of significant aspects of the auction rate
6 market.

7 11. WFI did not establish specific written supervisory procedures for the review of ARS
8 transactions, nor did WFI train supervisory personnel on how to review ARS transactions.

9 **II.**

10 **CONCLUSIONS OF LAW**

11 The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
12 Constitution and the Securities Act.

13 For the reasons alleged in the Findings of Fact, above, WFI failed to reasonably supervise,
14 within the meaning of A.R.S. § 44-1961(A)(12), its registered agents in connection with the
15 marketing of ARS to its customers.

16 The Commission finds the following relief appropriate and in the public interest.

17 **III.**

18 **ORDER**

19 On the basis of the Findings of Fact, Conclusions of Law, and WFI's consent to the entry of
20 this Order, for the sole purpose of settling this matter prior to a hearing and without admitting or
21 denying the Findings of Fact or Conclusions of Law,

22 **IT IS HEREBY ORDERED:**

23 1. This Order concludes the investigation by the Commission and any other action that
24 the Commission could commence under applicable Arizona law on behalf of Arizona as it relates
25 to WFI's marketing of ARS to customers.

2. This Order is entered into solely for the purpose of resolving the above-referenced multistate investigation and is not intended to be used for any other purpose.

3. WFI shall cease and desist from violating the Securities Act and will comply with the Securities Act.

4. Within ten (10) days from the entry of this Order, WFI shall pay the sum of Seventy-eight Thousand Four Hundred Fifty-one and 06/100 Dollars (\$78,451.06) to the state of Arizona, which amount constitutes Arizona's proportionate share of the multistate settlement amount of One Million Nine Hundred Thousand and 00/100 Dollars (\$1,900,000).

5. The total amount paid to the state of Arizona pursuant to the foregoing paragraph shall remain at Seventy-eight Thousand Four Hundred Fifty-one and 06/100 Dollars (\$78,451.06) regardless of whether another state securities regulator determines not to accept WFI's state settlement offer.

6. WFI shall take certain measures with respect to current and former customers that purchased "Eligible ARS," as defined and described in Paragraphs 7 through 14 of Section III, below.

7. Eligible ARS. For purposes of this Order as it relates to WFI, "Eligible ARS" shall mean ARS that were purchased for customers by WFI on or before February 13, 2008, and that have failed at auction at least once since February 13, 2008. Notwithstanding the foregoing definition, Eligible ARS shall not include ARS that were purchased for customers by WFI or entities acquired by Wells Fargo's parent companies in accounts owned, managed, or advised by or through independent registered investment advisers.

8. Eligible Investor. For the purposes of this Order as it relates to WFI, "Eligible Investor" shall mean:

a. Natural persons (including their IRA accounts, testamentary trust and estate accounts, custodian UGMA and UTMA accounts, and guardianship accounts) who purchased Eligible ARS;

1 b. Charities, endowments, or foundations with Internal Revenue Code Section
2 501(c)(3) status, or religious corporations or entities, that purchased Eligible ARS; and

3 c. Trusts, corporate trusts, corporations, employee pension plans/ERISA and
4 Taft Hartley Act plans, educational institutions, incorporated not for profit organizations,
5 limited liability companies, limited partnerships, nonpublic companies, partnerships,
6 personal holding companies, unincorporated associations, government or quasi government
7 entities, that are the beneficial owners of an account that purchased Eligible ARS.

8 d. "Eligible Investors," for the purposes of this Order as it relates to WFI, shall
9 not include brokers, dealers, or banks acting as conduits for their customers. This provision
10 shall not affect the rights of any beneficial owner of an account that otherwise would
11 qualify as an Eligible Investor, as set forth in Section III, Paragraph 8, subparts a, b, or c,
12 above.

13 e. "Eligible Investors," for the purposes of this Order as it relates to WFI, shall
14 not include any WFI customer who has entered into a settlement agreement with WFI prior
15 to November 18, 2009, or who has received a final arbitration award against WFI prior to
16 November 18, 2009, with respect to their Eligible ARS holdings at WFI.

17 9. Purchase Offer. WFI shall offer to purchase, at par plus accrued and unpaid
18 dividends/interest, from Eligible Investors their Eligible ARS that have failed at auction at least
19 once since February 13, 2008 (the "Purchase Offer"). WFI shall make the Purchase Offer and
20 purchase the Eligible ARS either as riskless principal or agent for one or more affiliated
21 companies, and not for its own account.

22 10. Notification and Buyback Procedures.

23 a. WFI shall undertake to identify and provide notice to Eligible Investors of
24 the relevant terms of this Order by no later than February 16, 2010. Said notice shall
25 explain what Eligible Investors must do to accept, in whole or in part, the Purchase Offer,
26 including how Eligible Investors may accept the Purchase Offer. WFI shall also provide

1 written notice of the relevant terms of this Order to any subsequently identified Eligible
2 Investors.

3 b. Initial Offer Period

4 i. WFI shall keep the Purchase Offer open for sixty (60) days after
5 mailing the notice required by Section III, Paragraph 10(a), above ("Initial Offer
6 Period").

7 ii. Eligible Investors may accept the Purchase Offer by notifying WFI
8 as described in the Purchase Offer, at any time before midnight, Eastern Time, on or
9 before the last day of the Initial Offer Period. For those Eligible Investors who
10 accept the Purchase Offer within the Initial Offer Period, WFI shall purchase their
11 Eligible ARS by no later than five (5) business days following the expiration of the
12 Initial Offer Period (the "Initial Purchase Deadline").

13 c. Second Offer Period

14 i. WFI shall undertake its best efforts to identify and provide a second
15 notice to all Eligible Investors who do not accept the Purchase Offer within the
16 Initial Offer Period. This second notice must satisfy the requirements discussed in
17 Section III, Paragraph 10(a), above, and be sent no later than thirty (30) days after
18 the Initial Purchase Deadline.

19 ii. WFI shall keep the Purchase Offer open for sixty (60) days after
20 mailing the second notice required by Section III, Paragraph 10(c)(i), above
21 ("Second Offer Period").

22 iii. Eligible Investors may accept the Purchase Offer by notifying WFI
23 as described in the Purchase Offer, at any time before midnight, Eastern Time, on or
24 before the last day of the Second Offer Period. For those Eligible Investors who
25 accept the Purchase Offer within the Second Offer Period, WFI shall purchase their
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1 Eligible ARS by no later than five (5) business days following the expiration of the
2 Second Offer Period (the "Second Purchase Deadline").

3 d. An Eligible Investor may revoke the Eligible Investor's acceptance of WFI's
4 Purchase Offer at any time up until WFI purchases such Eligible Investor's Eligible ARS or
5 provides notice of WFI's intent to purchase such Eligible ARS.

6 e. WFI's obligation to those Eligible Investors who custodied their Eligible
7 ARS away from WFI as of November 18, 2009, shall be contingent on: (1) WFI receiving
8 reasonably satisfactory assurance from the financial institution currently holding the
9 Eligible Investor's Eligible ARS that the bidding rights associated with such Eligible ARS
10 will be transferred to WFI; and (2) transfer of the Eligible ARS back to WFI.

11 f. WFI shall use its best efforts to identify, contact, and assist any Eligible
12 Investor who has transferred the Eligible ARS out of WFI's custody in returning such ARS
13 to WFI's custody, and shall not charge such Eligible Investor any fees relating to or in
14 connection with the return to WFI or custodianship by WFI of such Eligible ARS.

15 11. Customer Assistance Line. WFI shall promptly establish a dedicated toll-free
16 telephone assistance line and e-mail address to provide information and to respond to questions
17 concerning the terms of this Order. WFI shall maintain the telephone assistance line and e-mail
18 address through at least the Second Purchase Deadline.

19 12. Relief for Eligible Investors Who Sold Below Par. No later than upon the
20 completion of the buyback (as described in Section III, Paragraph 10, above), WFI shall undertake
21 its best efforts to identify and provide notice to, using the notice to Eligible Investors referenced in
22 Section III, Paragraph 10 above, Eligible Investors who sold Eligible ARS below par between
23 February 13, 2008, and November 18, 2009 ("Below Par Seller") and, upon receipt of satisfactory
24 evidence of the sale, pay them the difference between par and the price at which the Eligible
25 Investor sold the Eligible ARS, plus interest thereon at the rate of seven-day LIBOR.

1 13. Consequential Damages Arbitration Process.

2 a. WFI shall consent to participate in a special arbitration process
3 ("Arbitration") for the exclusive purpose of arbitrating any Eligible Investor's
4 consequential damages claim arising from their inability to sell Eligible ARS. WFI shall
5 notify Eligible Investors of the terms of the Arbitration process through the notice described
6 in Section III, Paragraph 10 above.

7 b. The Arbitration shall be conducted under the auspices of FINRA, pursuant to
8 the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16, 2007. WFI
9 will pay all applicable forum and filing fees.

10 c. Eligible Investors who choose to pursue such claims in the Arbitration shall
11 bear the burden of proving that they suffered consequential damages and that such damages
12 were caused by their inability to access funds invested in Eligible ARS. In the Arbitration,
13 WFI shall be able to defend itself against such claims; provided, however, that WFI shall
14 not contest liability for the illiquidity of the underlying ARS position, and provided further
15 that, unlike the FINRA's established special arbitration process, WFI shall be able to use as
16 part of its defense an investor's decision not to borrow money from WFI or its affiliates.

17 d. Eligible Investors who elect to use this special arbitration process provided
18 for herein shall not be eligible for punitive damages, or for any other type of damages other
19 than consequential damages.

20 e. Eligible Investors that elect to utilize FINRA's special arbitration process, as
21 set forth above, *are limited to the remedies available in that process* and may not bring or
22 pursue a claim relating to Eligible ARS in another forum.

23 14. Reimbursement of Negative Carry. In connection with the notices described in
24 Section III, Paragraphs 10 and 12 above, WFI shall inform Eligible Investors that, if they paid
25 more in interest on a loan through WFI or its affiliates secured by Eligible ARS than the customer
26 received in interest or dividends from the Eligible ARS during the time the loan was outstanding

1 (“Negative Carry”), then the Eligible Investor can provide WFI documentation evidencing the
2 amount of Negative Carry, and upon receipt of such documentation, WFI will reimburse the
3 Eligible Investor the amount of Negative Carry actually paid.

4 IV.

5 Additional Considerations

6 1. WFS (as successor to WFBS) and WFIS have voluntarily agreed to purchase ARS
7 from Eligible Investors as set forth in this Section IV, Paragraph 2 below.

8 2. “Eligible Investors,” for the purposes of this Order as it relates to WFS (as successor
9 to WFBS) and WFIS, shall mean the following:

10 a. Natural persons (including their IRA accounts, testamentary trust and estate
11 accounts, custodian UGMA and UTMA accounts, and guardianship accounts) who
12 purchased Eligible ARS;

13 b. Charities, endowments, or foundations with Internal Revenue Code Section
14 501(c)(3) status, or religious corporations or entities that purchased Eligible ARS; and

15 c. Trusts, corporate trusts, corporations, employee pension plan/ERISA and
16 Taft Hartley Act plans, educational institutions, incorporated not for profit organizations,
17 limited liability companies, limited partnerships, nonpublic companies, partnerships,
18 personal holding companies, unincorporated associations, governments or quasi
19 government entities, that are the beneficial owners of an account that purchased Eligible
20 ARS, unless the value of the account exceeded \$10 million as of January 31, 2008, or the
21 beneficial owner had disclosed to WFI, WFS (as successor to WFBS), WFBS, or WFIS
22 total investable assets in excess of \$10 million;

23 d. “Eligible Investors,” for the purposes of this Order as it relates to WFS (as
24 successor to WFBS) and WFIS, shall not include brokers, dealers, or banks acting as
25 conduits for their customers. This provision shall not affect the rights of any beneficial
26

1 owner of an account that otherwise would qualify as an Eligible Investor, as set forth in
2 subparts a, b, or c of this Paragraph, above;

3 e. "Eligible Investors," for the purposes of this Order as it relates to WFS (as
4 successor to WFBS) and WFIS, shall not include any WFI, WFBS, or WFIS customers who
5 have entered into a settlement agreement with WFI, WFBS (or WFS as its successor), or
6 WFIS prior to November 18, 2009, or who has received a final arbitration award against
7 WFI, WFBS (or WFS as its successor), or WFIS prior to November 18, 2009, with respect
8 to their Eligible ARS holdings at WFI, WFBS (or WFS as its successor), or WFIS.

9 f. "Eligible ARS," for purposes of this Order as it relates to WFS (as successor
10 to WFBS) and WFIS, shall mean ARS that were purchased at WFBS or WFIS on or before
11 February 13, 2008, and that have failed at auction at least once since February 13, 2008.
12 Notwithstanding the foregoing definition, Eligible ARS shall not include ARS that were
13 purchased at WFBS or WFIS or entities acquired by WFBS's or WFIS's parent companies
14 in accounts owned, managed, or advised by or through independent registered investment
15 advisers.

16 3. WFS (as successor to WFBS) and WFIS have agreed to use their best efforts to
17 provide liquidity solutions to their customers who have investible assets above \$10 million. WFS
18 (as successor to WFBS) and WFIS shall endeavor to work with issuers and other interested parties,
19 including regulatory and governmental entities, to expeditiously and on a best efforts basis provide
20 liquidity solutions, such as facilitation of secondary market transactions and announced issuer
21 redemptions of the Eligible ARS purchased through WFBS and WFIS. Though WFS (as successor
22 to WFBS) and WFIS shall use their best efforts to offer opportunities to the institutional and other
23 customers who are not Eligible Investors to liquidate Eligible ARS, WFS (as successor to WFBS),
24 and WFIS are under no obligation to offer to purchase ARS from these customers.

25 4. In consideration for the settlement terms contained in this Order, the Commission
26 shall not seek additional penalties, and shall terminate its investigation with respect to WFI, WFS

1 (as successor to WFBS), and WFIS regarding the marketing of ARS. However, if the Commission
2 determines that WFS (as successor to WFBS) and WFIS have failed to adhere to their voluntary
3 agreement as described above, the Commission may initiate investigation and take enforcement
4 action related to the marketing of ARS by WFS (as successor to WFBS) and WFIS.

5 5. If payment is not made by WFI as required in this Order, or if WFI defaults in any
6 of its other obligations set forth in this Order, the Commission may send WFI a written notice of
7 default and, if within ten (10) days after receiving the written notice, WFI does not cure the default,
8 the Commission may move to enforce the Order before any competent administrative body and/or
9 court of law.

10 6. This Order is not intended to indicate that WFI or any of its affiliates or current or
11 former employees shall be subject to any disqualifications contained in the federal securities law,
12 the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or
13 various states' securities laws, including any disqualifications from relying upon the registration
14 exemptions or safe harbor provisions. In addition, this Order is not intended to form the basis for
15 any such disqualifications.

16 7. Except as expressly provided in this Order, for any person or entity not a party to
17 this Order, this Order does not limit or create any private rights or remedies against WFI, limit or
18 create liability of WFI, or limit or create defenses of WFI to any claims. Unless applicable law
19 provides otherwise, by entering into this Order, the Commission does not waive any rights that any
20 departments, agencies, boards, commissions, authorities, political subdivisions, and corporations of
21 Arizona may have under applicable law, to the extent any such rights exist, to assert a claim, cause
22 of action, or application for compensatory, nominal and/or punitive damages, administrative, civil,
23 criminal, or injunctive relief against WFI in connection with the marketing of ARS by WFI.

24 8. This Order shall not disqualify WFI or any of its affiliates or current or former
25 employees from any business that they otherwise are qualified or licensed to perform under
26 applicable state law and this Order is not intended to form the basis for any disqualification.

1 9. This Order and any dispute related thereto shall be construed and enforced in
2 accordance with, and governed by, the laws of Arizona without regard to any choice of law
3 principles.

4 10. WFI, through its execution of this Order, voluntarily waives its right to a hearing on
5 this matter and to judicial review of this Order under Articles 11 and 12 of the Securities Act.

6 11. WFI enters into this Order voluntarily and represents that no threats, offers,
7 promises, or inducements of any kind have been made by the Commission or any member, officer,
8 employee, agent, or representative of the Commission to induce WFI to enter into this Order.

9 12. This Order shall be binding upon WFI, its affiliates, successors, and assigns with
10 respect to all conduct subject to the provisions above and all future obligations, responsibilities,
11 undertakings, commitments, limitations, restrictions, events, and conditions.

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13. Nothing contained in this Order shall be deemed to be an admission of any liability, fault, or wrongdoing. The Parties agree that this Order shall not be admissible in any hearing, action, or proceeding except to prove the existence of this Order or to enforce the Order's terms.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION


CHAIRMAN

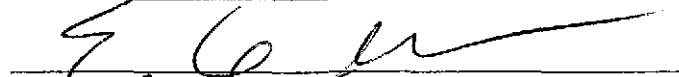

COMMISSIONER


COMMISSIONER


COMMISSIONER

EXCUSED
COMM. KENNEDY
COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 18th day of June, 2010.


ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

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**CONSENT TO ENTRY OF ORDER TO CEASE AND DESIST AND
ORDER FOR ADMINISTRATIVE PENALTIES BY
WELLS FARGO INVESTMENTS, LLC**

Wells Fargo Investments, LLC ("WFI") hereby acknowledges that it has been served with a copy of this Order to Cease and Desist and Order for Administrative Penalties ("Order"), has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

WFI admits the jurisdiction of the Arizona Corporation Commission ("Commission"), neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to entry of this Order by the Commission as settlement of the issues contained in this Order.

WFI states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that it has entered into this Order voluntarily.

Lisa Amador represents that he/she is CCO of WFI and that, as such, has been authorized by WFI to enter into this Order for and on behalf of WFI.

DATED this 19th day of May, 2010.

WELLS FARGO INVESTMENTS, LLC

By: Lisa Amador
Title: Chief Compliance Officer/ SUP

STATE OF California)
County of San Francisco)

SUBSCRIBED AND SWORN TO before me this 19th day of May, 2010.

Wendy L. Parks
Notary Public

My commission expires:

6/9/2013



SERVICE LIST FOR: Wells Fargo Investments, LLC

DOCKET NO.: S-20727A-10-0068

Michael S. Leib, Esq.
Reed Smith LLP
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Chicago, IL 60606-7507